

HERBERT CANG, PETITIONER, VS. COURT OF APPEALS AND SPOUSES RONALD V. CLAVANO AND MARIA CLARA CLAVANO, RESPONDENTS.

G.R. No. 105308. September 25, 1998

Ponente: ROMERO, J.

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ROMERO, J.:

Can minor children be legally adopted without the written consent of a natural parent on the ground that the latter has abandoned them? The answer to this interesting query, certainly not one of first impression, would have to be reached, not solely on the basis of law and jurisprudence, but also the hard reality presented by the facts of the case.

This is the question posed before this Court in this petition for review on certiorari of the Decision[1] of the Court of Appeals affirming the decree of adoption issued by the Regional Trial Court of Cebu City, Branch 14,[2] in Special Proceedings No. 1744-CEB, "In the Matter of the Petition for Adoption of the minors Keith, Charmaine and Joseph Anthony, all surnamed Cang, Spouses Ronald V. Clavano and Maria Clara Diago Clavano, petitioners."

Petitioner Herbert Cang and Anna Marie Clavano who were married on January 27, 1973, begot three children, namely: Keith, born on July 3, 1973; Charmaine, born on January 23, 1977, and Joseph Anthony, born on January 3, 1981.

During the early years of their marriage, the Cang couple's relationship was undisturbed. Not long thereafter, however, Anna Marie learned of her husband's alleged extramarital affair with Wilma Soco, a family friend of the Clavanos.

Upon learning of her husband's alleged illicit liaison, Anna Marie filed a petition for legal separation with alimony pendente lite[3] with the then Juvenile and Domestic Relations Court of Cebu[4] which rendered a decision[5] approving the joint manifestation of the Cang spouses providing that they agreed to "live separately and apart or from bed and board." They further agreed:

"(c) That the children of the parties shall be entitled to a monthly support of ONE THOUSAND PESOS (P1,000.00) effective from the date of the filing of the complaint. This shall constitute a first lien on the net proceeds of the house and lot jointly owned by the parties situated at Cinco Village, Mandaue City;

(d) That the plaintiff shall be entitled to enter into any contract or agreement with any person or persons, natural or juridical without the written consent of the husband; or any undertaking or acts that ordinarily requires husband's consent as the parties are by this agreement legally separated;"[6]

Petitioner then left for the United States where he sought a divorce from Anna Marie before the Second Judicial District Court of the State of Nevada. Said court issued the divorce decree that also granted sole custody of the three minor children to Anna Marie, reserving "rights of visitation at all reasonable times and places" to petitioner.[7]

Thereafter, petitioner took an American wife and thus became a naturalized American citizen. In 1986, he divorced his American wife and never remarried.

While in the United States, petitioner worked in Tablante Medical Clinic earning P18,000.00 to P20,000.00 a month[8] a portion of which was remitted to the Philippines for his children's expenses and another, deposited in the bank in the name of his children.

Meanwhile, on September 25, 1987, private respondents Ronald V. Clavano and Maria Clara Diago Clavano, respectively the brother and sister-in-law of Anna Marie, filed Special Proceedings No. 1744-CEB for the adoption of the three minor Cang children before the Regional Trial Court of Cebu. The petition bears the signature of then 14-year-old Keith signifying consent to his adoption. Anna Marie likewise filed an affidavit of consent alleging that her husband had "evaded his legal obligation to support" his children; that her brothers and sisters including Ronald V. Clavano, had been helping her in taking care of the children; that because she would be going to the United States to attend to a family business, "leaving the children would be a problem and would naturally hamper (her) job-seeking venture abroad;" and that her husband had "long forfeited his parental rights" over the children for the following reasons:

1. The decision in Civil Case No. JD-707 allowed her to enter into any contract without the written consent of her husband;
2. Her husband had left the Philippines to be an illegal alien in the United States and had been transferring from one place to another to avoid detection by Immigration authorities, and
3. Her husband had divorced her.

Upon learning of the petition for adoption, petitioner immediately returned to the Philippines and filed an opposition thereto, alleging that, although private respondents Ronald and Maria Clara Clavano were financially capable of supporting the children while his finances were "too meager" compared to theirs, he could not "in conscience, allow anybody to strip him of his parental authority over his beloved children."

Pending resolution of the petition for adoption, petitioner moved to reacquire custody over his children alleging that Anna Marie had transferred to the United States thereby leaving custody of their children to private respondents. On January 11, 1988, the Regional Trial Court of Cebu City, Branch 19, issued an order finding that Anna Marie had, in effect, relinquished custody over the children and, therefore, such custody should be transferred to the father. The court then directed the Clavanos to deliver custody over the minors to petitioner.

On March 27, 1990, the Regional Trial Court of Cebu City, Branch 14, issued a decree of adoption with a dispositive portion reading as follows:

"WHEREFORE, premises considered, the petition for adoption of the minors Keith, Charmaine and Joseph Anthony all surnamed Cang, by the petitioners-spouses Ronald V. Clavano and Maria Clara Diago Clavano is hereby granted and approved. These children shall henceforth be known and called as Keith D. Clavano, Charmaine D. Clavano and Joseph Anthony D. Clavano respectively. Moreover, this Decree of Adoption shall:

- (1) Confer upon the adopted children the same rights and duties as though they were in fact the legitimate children of the petitioners;
- (2) Dissolve the authority vested in the parents by nature, of the children; and,
- (3) Vest the same authority in the petitioners.

Furnish the Local Civil Registrar of Cebu City, Philippines with a copy of this Decree of Adoption for registration purposes.

SO ORDERED."

In so ruling, the lower court was "impelled" by these reasons:

- (1) The Cang children had, since birth, developed "close filial ties with the Clavano family, especially their maternal uncle," petitioner Ronald Clavano.
- (2) Ronald and Maria Clara Clavano were childless and, with their printing press, real estate business, export business and gasoline station and mini-mart in Rosemead, California, U.S.A., had substantial assets and income.
- (3) The natural mother of the children, Anna Marie, nicknamed "Menchu," approved of the adoption because of her heart ailment, near-fatal accident in 1981, and the fact that she could not provide them a secure and happy future as she "travels a lot."
- (4) The Clavanos could provide the children moral and spiritual direction as they would go to church together and had sent the children to Catholic schools.
- (5) The children themselves manifested their desire to be adopted by the Clavanos - Keith had testified and expressed the wish to be adopted by the Clavanos while the two younger ones were observed by the court to have "snuggled" close to Ronald even though their natural mother was around.

On the other hand, the lower court considered the opposition of petitioner to rest on "a very shaky foundation" because of its findings that:

- (1) Petitioner was "morally unfit to be the father of his children" on account of his being "an improvident father of his family" and an "undisguised Lothario." This conclusion is based on the testimony of his alleged paramour, mother of his two sons and close friend of Anna Marie, Wilma Soco, who said that she and petitioner lived as husband and wife in the very house of the Cangs in Opao, Mandaue City.
- (2) The alleged deposits of around \$10,000 that were of "comparatively recent dates" were "attempts at verisimilitude" as these were joint deposits the authenticity of which could not be verified.
- (3) Contrary to petitioner's claim, the possibility of his reconciliation with Anna Marie was "dim if not nil" because it was petitioner who "devised, engineered and executed the divorce proceedings at the Nevada Washoe County court."
- (4) By his naturalization as a U.S. citizen, petitioner "is now an alien from the standpoint of Philippine laws" and therefore, how his "new attachments and loyalties would sit with his (Filipino) children is an open question."

Quoting with approval the evaluation and recommendation of the RTC Social Worker in her Child Study Report, the lower court concluded as follows:

"Simply put, the oppositor Herbert Cang has abandoned his children. And abandonment of a child by its (sic) parent is commonly specified by statute as a ground for dispensing with his consent to its (sic) adoption (Re Cozza, 163 Cal. 514 P. 161, Ann. [As. 1914A, 214]). Indeed, in such case, adoption will be allowed not only without the consent of the parent, but even against his opposition (Re McKeag, 141 Cal. 403, 74 P. 1039, 99 Am. St. Rep. 80; Re Camp. 131 Cal. 469, 63 P. 736, 82 Am. St. Rep. 371; Graham v. Francis, 83 Colo. 346, 265 P. 690, citing R.C.L.; Seibert, 170 Iowa, 561, 153 N.W. 160, citing R.C.L.; Stearns v. Allen, 183 Mass. 404, 67 N.E. 349; 97 Am. St. Rep. 441; Wilson v. Otis, 71 N.H. 483, 53 A. 439, 93 Am. St. Rep. 564; Nugent v. Powell, 4 Wyo. 173, 33 P. 23, 20 L.R.A. 199, 62 Am. St. Rep. 17.)"[9]

Before the Court of Appeals, petitioner contended that the lower court erred in holding that it would be in the best interest of the three children if they were adopted by private respondents Ronald and Maria Clara Clavano. He

asserted that the petition for adoption was fatally defective and tailored to divest him of parental authority because: (a) he did not have a written consent to the adoption; (b) he never abandoned his children; (c) Keith and Charmaine did not properly give their written consent; and (d) the petitioners for adoption did not present as witness the representative of the Department of Social Welfare and Development who made the case study report required by law.

The Court of Appeals affirmed the decree of adoption stating:

"Article 188 of the Family Code requires the written consent of the natural parents of the child to be adopted. It has been held however that the consent of the parent who has abandoned the child is not necessary (*Dayrit vs. Piccio*, 92 Phil. 729; *Santos vs. Ananzanso*, 16 SCRA 344). The question therefore is whether or not oppositor may be considered as having abandoned the children. In adoption cases, abandonment connotes any conduct on the part of the parent to forego parental duties and relinquish parental claims to the child, or the neglect or refusal to perform the natural and legal obligations which parents owe their children (*Santos vs. Ananzanso*, supra), or the withholding of the parent's presence, his care and the opportunity to display voluntary affection. The issue of abandonment is amply covered by the discussion of the first error.

Oppositor argues that he has been sending dollar remittances to the children and has in fact even maintained bank accounts in their names. His duty to provide support comes from two judicial pronouncements. The first, the decision in JD-707 CEB, supra, obliges him to pay the children P1,000.00 a month. The second is mandated by the divorce decree of the Nevada, U.S.A. Federal Court which orders him to pay monthly support of US\$50.00 for each child. Oppositor has not submitted any evidence to show compliance with the decision in JD-101 CEB, but he has submitted 22 cancelled dollar checks (Exhs. 24 to 45) drawn in the children's names totalling \$2,126.98. The last remittance was on October 6, 1987 (Exh. 45). His obligation to provide support commenced under the divorce decree on May 5, 1982 so that as of October 6, 1987, oppositor should have made 53 remittances of \$150.00, or a total of \$7,950.00. No other remittances were shown to have been made after October 6, 1987, so that as of this date, oppositor was woefully in arrears under the terms of the divorce decree. And since he was totally in default of the judgment in JD-707 CEB, the inevitable conclusion is oppositor had not really been performing his duties as a father, contrary to his protestations.

True, it has been shown that oppositor had opened three accounts in different banks, as follows -

Acct. No. Date Opened Balance Name of Bank

- 1) 118-606437-4 July 23, 1985 \$5,018.50 Great Western
Oct. 29, 1987 Savings, Daly City,
Cal., U.S. A.
- 2) 73-166-8 March 5, 1986 3,129.00 Matewan National Bank
Oct. 26, 1987 of Williamson, West
- 3) 564-146883 December 31, 1986 2,622.19 Virginia, U.S.A.
Oct. 29, 1987 Security Pacific
National Bank, Daly City, Cal., U.S.A.

The first and third accounts were opened however in oppositor's name as trustee for Charmaine Cang and Joseph Anthony Cang, respectively. In other words, the accounts are operated and the amounts withdrawable by oppositor himself and it cannot be said that they belong to the minors. The second is an 'or' account, in the names of Herbert Cang or Keith Cang. Since Keith is a minor and in the Philippines, said account is operable only by oppositor and the funds withdrawable by him alone.

The bank accounts do not really serve what oppositor claimed in his offer of evidence 'the aim and purpose of providing for a better future and security of his family.'"[10]

Petitioner moved to reconsider the decision of the Court of Appeals. He emphasized that the decree of legal separation was not based on the merits of the case as it was based on a manifestation amounting to a compromise agreement between him and Anna Marie. That he and his wife agreed upon the plan for him to leave for the United States was borne out by the fact that prior to his departure to the United States, the family lived with petitioner's parents. Moreover, he alone did not instigate the divorce proceedings as he and his wife initiated the "joint complaint" for divorce.

Petitioner argued that the finding that he was not fit to rear and care for his children was belied by the award to him of custody over the children in Civil Case No. JD-707. He took exception to the appellate court's findings that as an American citizen he could no longer lay claim to custody over his children because his citizenship would not take away the fact that he "is still a father to his children." As regards his alleged illicit relationship with another woman, he had always denied the same both in Civil Case No. JD-707 and the instant adoption case. Neither was it true that Wilma Soco was a neighbor and family friend of the Clavanos as she was residing in Mandaue City seven (7) kilometers away from the Clavanos who were residents of Cebu City. Petitioner insisted that the testimony of Wilma Soco should not have been given weight for it was only during the hearing of the petition for adoption that Jose Clavano, a brother of Ronald, came to know her and went to her residence in Iligan City to convince her to be a witness for monetary considerations. Lastly, petitioner averred that it would be hypocritical of the Clavanos to claim that they could love the children much more than he could.[11]

His motion for reconsideration having been denied, petitioner is now before this Court, alleging that the petition for adoption was fatally defective as it did not have his written consent as a natural father as required by Article 31 (2) of Presidential Decree No. 603, the Child and Youth Welfare Code, and Article 188 (2) of the Family Code.

Article 31 of P.D. No. 603 provides -

"ART. 31. Whose Consent is Necessary. - The written consent of the following to the adoption shall be necessary:

- (1) The person to be adopted, if fourteen years of age or over;
- (2) The natural parents of the child or his legal guardian of the Department of Social Welfare or any duly licensed child placement agency under whose care the child may be;
- (3) The natural children, fourteen years and above, of the adopting parents." (Underscoring supplied)

On December 17, 1986, then President Corazon C. Aquino issued Executive Order No. 91 amending Articles 27, 28, 29, 31, 33 and 35 of the Child and Youth Welfare Code. As thus amended, Article 31 read:

"ART. 31. Whose Consent is Necessary. - The written consent of the following to the adoption shall be necessary:

- (1) The person to be adopted, if fourteen years of age or over;
- (2) The natural parents of the child or his legal guardian after receiving counselling and appropriate social services from the Ministry of Social Services and Development or from a duly licensed child-placement agency;
- (3) The Ministry of Social Services and Development or any duly licensed child-placement agency under whose care and legal custody the child may be;
- (4) The natural children, fourteen years and above, of the adopting parents." (Underscoring supplied)

Jurisdiction being a matter of substantive law, the established rule is that the statute in force at the time of the commencement of the action determines the jurisdiction of the court.[12] As such, when private respondents filed the petition for adoption on September 25, 1987, the applicable law was the Child and Youth Welfare Code, as

amended by Executive Order No. 91.

During the pendency of the petition for adoption or on August 3, 1988, the Family Code which amended the Child and Youth Welfare Code took effect. Article 256 of the Family Code provides for its retroactivity "insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code or other laws." As amended by the Family Code, the statutory provision on consent for adoption now reads:

"Art. 188. The written consent of the following to the adoption shall be necessary:

- (1) The person to be adopted, if ten years of age or over;
- (2) The parents by nature of the child, the legal guardian, or the proper government instrumentality;
- (3) The legitimate and adopted children, ten years of age or over, of the adopting parent or parents;
- (4) The illegitimate children, ten years of age or over, of the adopting parents, if living with said parent and the latter's spouse, if any; and
- (5) The spouse, if any, of the person adopting or to be adopted." (Underscoring supplied)

Based on the foregoing, it is thus evident that notwithstanding the amendments to the law, the written consent of the natural parent to the adoption has remained a requisite for its validity. Notably, such requirement is also embodied in Rule 99 of the Rules of Court as follows:

"SEC. 3. Consent to adoption. - There shall be filed with the petition a written consent to the adoption signed by the child, if fourteen years of age or over and not incompetent, and by the child's spouse, if any, and by each of its known living parents who is not insane or hopelessly intemperate or has not abandoned the child, or if there are no such parents by the general guardian or guardian ad litem of the child, or if the child is in the custody of an orphan asylum, children's home, or benevolent society or person, by the proper officer or officers of such asylum, home, or society, or by such persons; but if the child is illegitimate and has not been recognized, the consent of its father to the adoption shall not be required." (Underscoring supplied)

As clearly inferred from the foregoing provisions of law, the written consent of the natural parent is indispensable for the validity of the decree of adoption. Nevertheless, the requirement of written consent can be dispensed with if the parent has abandoned the child^[13] or that such parent is "insane or hopelessly intemperate." The court may acquire jurisdiction over the case even without the written consent of the parents or one of the parents provided that the petition for adoption alleges facts sufficient to warrant exemption from compliance therewith. This is in consonance with the liberality with which this Court treats the procedural aspect of adoption. Thus, the Court declared:

"x x x. The technical rules of pleading should not be stringently applied to adoption proceedings, and it is deemed more important that the petition should contain facts relating to the child and its parents, which may give information to those interested, than that it should be formally correct as a pleading. Accordingly, it is generally held that a petition will confer jurisdiction if it substantially complies with the adoption statute, alleging all facts necessary to give the court jurisdiction."^[14]

In the instant case, only the affidavit of consent of the natural mother was attached to the petition for adoption. Petitioner's consent, as the natural father is lacking. Nonetheless, the petition sufficiently alleged the fact of abandonment of the minors for adoption by the natural father as follows:

"3. That the children's mother, sister of petitioner RONALD V. CLAVANO, has given her express consent to this adoption, as shown by Affidavit of Consent, Annex 'A'. Likewise, the written consent of Keith Cang, now 14 years of age appears on page 2 of this petition; However, the father of the children, Herbert Cang, had already left his wife and children and had already divorced the former, as evidenced by the xerox copy of the DECREE OF DIVORCE issued by the County of Washoe, State of Nevada, U.S.A. (Annex 'B') which was filed at the instance of Mr. Cang, not long after he abandoned his family to live in the United States as an

illegal immigrant."[15]

The allegations of abandonment in the petition for adoption, even absent the written consent of petitioner, sufficiently vested the lower court with jurisdiction since abandonment of the child by his natural parents is one of the circumstances under which our statutes and jurisprudence[16] dispense with the requirement of written consent to the adoption of their minor children.

However, in cases where the father opposes the adoption primarily because his consent thereto was not sought, the matter of whether he had abandoned his child becomes a proper issue for determination. The issue of abandonment by the oppositor natural parent is a preliminary issue that an adoption court must first confront. Only upon failure of the oppositor natural father to prove to the satisfaction of the court that he did not abandon his child may the petition for adoption be considered on its merits.

As a rule, factual findings of the lower courts are final and binding upon this Court.[17] This Court is not expected nor required to examine or contrast the oral and documentary evidence submitted by the parties.[18] However, although this Court is not a trier of facts, it has the authority to review and reverse the factual findings of the lower courts if it finds that these do not conform to the evidence on record.[19]

In *Reyes v. Court of Appeals*,[20] this Court has held that the exceptions to the rule that factual findings of the trial court are final and conclusive and may not be reviewed on appeal are the following: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is a grave abuse of discretion; (3) when the finding is grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the Court of Appeals is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings of the Court of Appeals are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion and (10) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.

This Court finds that both the lower court and the Court of Appeals failed to appreciate facts and circumstances that should have elicited a different conclusion[21] on the issue of whether petitioner has so abandoned his children, thereby making his consent to the adoption unnecessary.

In its ordinary sense, the word "abandon" means to forsake entirely, to forsake or renounce utterly. The dictionaries trace this word to the root idea of "putting under a ban." The emphasis is on the finality and publicity with which a thing or body is thus put in the control of another, hence, the meaning of giving up absolutely, with intent never to resume or claim one's rights or interests.[22] In reference to abandonment of a child by his parent, the act of abandonment imports "any conduct of the parent which evinces a settled purpose to forego all parental duties and relinquish all parental claims to the child." It means "neglect or refusal to perform the natural and legal obligations of care and support which parents owe their children." [23]

In the instant case, records disclose that petitioner's conduct did not manifest a settled purpose to forego all parental duties and relinquish all parental claims over his children as to constitute abandonment. Physical estrangement alone, without financial and moral desertion, is not tantamount to abandonment.[24] While admittedly, petitioner was physically absent as he was then in the United States, he was not remiss in his natural and legal obligations of love, care and support for his children. He maintained regular communication with his wife and children through letters and telephone. He used to send packages by mail and catered to their whims.

Petitioner's testimony on the matter is supported by documentary evidence consisting of the following handwritten letters to him of both his wife and children:

1. Exh. 1 - a 4-page undated letter of Menchu (Anna Marie) addressed to "Dear Bert" on a C.Westates Carbon Phil. Corp. stationery. Menchu stated therein that it had been "a long time since the last time you've heard from me excluding that of the phone conversation we've had." She discussed petitioner's intention to buy a motorbike for Keith, expressing apprehension over risks that could be engendered by Keith's use of it. She said that in the "last phone conversation" she had with petitioner on the birthday of "Ma," she forgot to tell petitioner that Keith's voice had changed; he had become a "bagito" or a teen-ager with many "fans" who sent him Valentine's cards. She told him how Charmaine had become quite a talkative "almost dalaga" who could carry on a conversation with her angkong and how pretty she was in white dress when she won among the candidates in the Flores de Mayo after she had prayed so hard for it. She informed him, however, that she was worried because Charmaine was vain and went to extravagance as she loved clothes. About Joeton (Joseph Anthony), she told petitioner that the boy was smart for his age and "quite spoiled" being the youngest of the children in Lahug. Joeton was mischievous but Keith was his idol with whom he would sleep anytime. She admitted having said so much about the children because they might not have informed petitioner of "some happenings and spices of life" about themselves. She said that it was "just very exciting to know how they've grown up and very pleasant, too, that each of them have (sic) different characters." She ended the letter with the hope that petitioner was "at the best of health." After extending her regards "to all," she signed her name after the word "Love." This letter was mailed on July 9, 1986 from Cebu to petitioner whose address was P.O. Box 2445, Williamson, West Virginia 25661 (Exh. 1-D).

2. Exh. 2 - letter dated 11/13/84 on a green stationery with golden print of "a note from Menchu" on the left upper corner. Anna Marie stated that "we" wrote to petitioner on Oct. 2, 1984 and that Keith and Joeton were very excited when petitioner "called up last time." She told him how Joeton would grab the phone from Keith just so petitioner would know what he wanted to order. Charmaine, who was asleep, was so disappointed that she missed petitioner's call because she also wanted something that petitioner should buy. Menchu told petitioner that Charmaine wanted a pencil sharpener, light-colored T-shirts for her walking shorts and a (k)nap sack. Anna Marie informed petitioner that the kids were growing up and so were their needs. She told petitioner to be "very fatherly" about the children's needs because those were expensive here. For herself, Anna Marie asked for a subscription of Glamour and Vogue magazines and that whatever expenses he would incur, she would "replace" these. As a postscript, she told petitioner that Keith wanted a size 6 khaki-colored "Sperry topsider shoes."

3. Exh. 3 - an undated note on a yellow small piece of paper that reads:

"Dear Herbert,

Hi, how was Christmas and New Year? Hope you had a wonderful one.

By the way thanks for the shoes, it was a nice one. It's nice to be thought of at X'mas. Thanks again.

Sincerely,
Menchu"

4. Exh. 4 - a two-page undated letter of Keith on stationery of Jose Clavano, Inc. addressed to "Dear Dad." Keith told his father that they tried to tell their mother "to stay for a little while, just a few weeks after classes start(s)" on June 16. He informed petitioner that Joeton would be in Kinder I and that, about the motorbike, he had told his mother to write petitioner about it and "we'll see what you're (sic) decision will be." He asked for chocolates, nuts, basketball shirt and shorts, rubber shoes, socks, headband, some clothes for outing and perfume. He told petitioner that they had been going to Lahug with their mother picking them up after Angkong or Ama had prepared lunch or dinner. From her aerobics, his mother would go for them in Lahug at about 9:30 or 10:00 o'clock in the evening. He wished his father "luck and the best of health" and that they

prayed for him and their other relatives. The letter was ended with "Love Keith."

5. Exh. 5 - another undated long letter of Keith. He thanked his father for the Christmas card "with \$40.00, \$30.00 and \$30.00" and the "card of Joeton with \$5.00 inside." He told petitioner the amounts following his father's instructions and promise to send money through the mail. He asked his father to address his letter directly to him because he wanted to open his own letters. He informed petitioner of activities during the Christmas season - that they enjoyed eating, playing and giving surprises to their mother. He apprised him of his daily schedule and that their mother had been closely supervising them, instructing them to fold their blankets and pile up their pillows. He informed petitioner that Joeton had become very smart while Charmaine, who was also smart, was very demanding of their mother. Because their mother was leaving for the United States on February 5, they would be missing her like they were missing petitioner. He asked for his "things" and \$200.00. He told petitioner more anecdotes about Joeton like he would make the sign of the cross even when they would pass by the Iglesia ni Cristo church and his insistence that Aquino was not dead because he had seen him on the betamax machine. For Keith, Charmaine had become "very maldita" who was not always satisfied with her dolls and things but Joeton was full of surprises. He ended the letter with "Love your son, Keith." The letter was mailed on February 6, 1985 (Exh. 5-D).

6. Exh. 6 - an undated letter Charmaine. She thanked petitioner for the bathing suit, key chain, pencil box, socks, half shirt, pencil sharpener and \$50.00. She reminded him of her birthday on January 23 when she would turn 9 years old. She informed him that she wore size 10 and the size of her feet was IM. They had fun at Christmas in Lahug but classes would start on January 9 although Keith's classes had started on January 6. They would feel sad again because Mommy would be leaving soon. She hoped petitioner would keep writing them. She signed, "Love, Charmaine."

7. Exh. 7 - an undated letter of Keith. He explained to petitioner that they had not been remiss in writing letters to him. He informed him of their trip to Manila - they went to Malacañang, Tito Doy Laurel's house, the Ministry of Foreign Affairs, the executive house, Tagaytay for three days and Baguio for one week. He informed him that he got "honors," Charmaine was 7th in her class and Joeton had excellent grades. Joeton would be enrolled in Sacred Heart soon and he was glad they would be together in that school. He asked for his "reward" from petitioner and so with Charmaine and Joeton. He asked for a motorbike and dollars that he could save. He told petitioner that he was saving the money he had been sending them. He said he missed petitioner and wished him the best. He added that petitioner should call them on Sundays.

8. Exh. 8 - a letter from Joeton and Charmaine but apparently written by the latter. She asked for money from petitioner to buy something for the school and "something else." She promised not to spend so much and to save some. She said she loved petitioner and missed him. Joeton said "hi!" to petitioner. After ending the letter with "Love, Joeton and Charmaine," she asked for her prize for her grades as she got seventh place.

9. Exh. 9 - undated letter of Keith. He assured petitioner that he had been writing him; that he would like to have some money but he would save them; that he learned that petitioner had called them up but he was not around; that he would be going to Manila but would be back home May 3; that his Mommy had just arrived Thursday afternoon, and that he would be the "official altar boy." He asked petitioner to write them soon.

10. Exh. 10 - Keith thanked petitioner for the money he sent. He told petitioner that he was saving some in the bank and he was proud because he was the only one in his group who saved in the bank. He told him that Joeton had become naughty and would claim as his own the shirts sent to Keith by petitioner. He advised petitioner to send pants and shirts to Joeton, too, and asked for a pair of topsider shoes and candies. He informed petitioner that he was a member of the basketball team and that his mom would drive for his group. He asked him to call them often like the father of Ana Christie and to write them when he would call so that they could wait for it. He informed petitioner that they had all grown bigger and heavier. He hoped petitioner would be happy with the letter that had taken him so long to write because he did not want to commit any mistakes. He asked petitioner to buy him perfume (Drakkar) and, after thanking petitioner, added that the latter

should buy something for Mommy.

11. Exh. 11 - a Christmas card "For My Wonderful Father" dated October 8, 1984 from Keith, Charmaine and Joeton.

12. Exh. 12 - another Christmas card, "Our Wish For You" with the year '83 written on the upper right hand corner of the inside page, from Keith, Charmaine and Joeton.

13. Exh. 13 - a letter of Keith telling petitioner that he had written him even when their Mom "was there" where she bought them clothes and shoes. Keith asked petitioner for \$300.00. Because his mother would not agree to buy him a motorbike, he wanted a Karaoke unit that would cost P12,000.00. He informed petitioner that he would go to an afternoon disco with friends but their grades were all good with Joeton receiving "stars" for excellence. Keith wanted a bow and arrow Rambo toys and G.I. Joe. He expressed his desire that petitioner would come and visit them someday.

14. Exh. 14 - a letter of Keith with one of the four pages bearing the date January 1986. Keith told his father that they had received the package that the latter sent them. The clothes he sent, however, fitted only Keith but not Charmaine and Joeton who had both grown bigger. Keith asked for grocery items, toys and more clothes. He asked, in behalf of his mother, for low-heeled shoes and a dress to match, jogging pants, tights and leotards that would make her look sexy. He intimated to petitioner that he had grown taller and that he was already ashamed to be asking for things to buy in the grocery even though his mother had told him not to be shy about it.

Aside from these letters, petitioner also presented certifications of banks in the U.S.A. showing that even prior to the filing of the petition for adoption, he had deposited amounts for the benefit of his children.[25] Exhibits 24 to 45 are copies of checks sent by petitioner to the children from 1985 to 1989.

These pieces of evidence are all on record. It is, therefore, quite surprising why the courts below simply glossed over these, ignoring not only evidence on financial support but also the emotional exchange of sentiments between petitioner and his family. Instead, the courts below emphasized the meagerness of the amounts he sent to his children and the fact that, as regards the bank deposits, these were "withdrawable by him alone." Simply put, the courts below attached a high premium to the prospective adopters' financial status but totally brushed aside the possible repercussion of the adoption on the emotional and psychological well-being of the children.

True, Keith had expressed his desire to be adopted by his uncle and aunt. However, his seeming steadfastness on the matter as shown by his testimony is contradicted by his feelings towards his father as revealed in his letters to him. It is not at all farfetched to conclude that Keith's testimony was actually the effect of the filing of the petition for adoption that would certainly have engendered confusion in his young mind as to the capability of his father to sustain the lifestyle he had been used to.

The courts below emphasized respondents' emotional attachment to the children. This is hardly surprising for, from the very start of their young lives, the children were used to their presence. Such attachment had persisted and certainly, the young ones' act of snuggling close to private respondent Ronald Clavano was not indicative of their emotional detachment from their father. Private respondents, being the uncle and aunt of the children, could not but come to their succor when they needed help as when Keith got sick and private respondent Ronald spent for his hospital bills.

In a number of cases, this Court has held that parental authority cannot be entrusted to a person simply because he could give the child a larger measure of material comfort than his natural parent. Thus, in *David v. Court of Appeals*,^[26] the Court awarded custody of a minor illegitimate child to his mother who was a mere secretary and market vendor instead of to his affluent father who was a married man, not solely because the child opted to go

with his mother. The Court said:

"Daisie and her children may not be enjoying a life of affluence that private respondent promises if the child lives with him. It is enough, however, that petitioner is earning a decent living and is able to support her children according to her means."

In *Celis v. Cafuir*[27] where the Court was confronted with the issue of whether to award custody of a child to the natural mother or to a foster mother, this Court said:

"This court should avert the tragedy in the years to come of having deprived mother and son of the beautiful associations and tender, imperishable memories engendered by the relationship of parent and child. We should not take away from a mother the opportunity of bringing up her own child even at the cost of extreme sacrifice due to poverty and lack of means; so that afterwards, she may be able to look back with pride and a sense of satisfaction at her sacrifices and her efforts, however humble, to make her dreams of her little boy come true. We should not forget that the relationship between a foster mother and a child is not natural but artificial. If the child turns out to be a failure or forgetful of what its foster parents had done for him, said parents might yet count and appraise (sic) all that they have done and spent for him and with regret consider all of it as a dead loss, and even rue the day they committed the blunder of taking the child into their hearts and their home. Not so with a real natural mother who never counts the cost and her sacrifices, ever treasuring memories of her associations with her child, however unpleasant and disappointing. Flesh and blood count. x x x."

In *Espiritu v. Court of Appeals*,[28] the Court stated that "(I)n ascertaining the welfare and best interests of the child, courts are mandated by the Family Code to take into account all relevant considerations." Thus, in awarding custody of the child to the father, the Court said:

"A scrutiny of the pleadings in this case indicates that Teresita, or at least, her counsel are more intent on emphasizing the 'torture and agony' of a mother separated from her children and the humiliation she suffered as a result of her character being made a key issue in court rather than the feelings and future, the best interests and welfare of her children. While the bonds between a mother and her small child are special in nature, either parent, whether father or mother, is bound to suffer agony and pain if deprived of custody. One cannot say that his or her suffering is greater than that of the other parent. It is not so much the suffering, pride, and other feelings of either parent but the welfare of the child which is the paramount consideration." (Italics supplied)[29]

Indeed, it would be against the spirit of the law if financial consideration were to be the paramount consideration in deciding whether to deprive a person of parental authority over his children. There should be a holistic approach to the matter, taking into account the physical, emotional, psychological, mental, social and spiritual needs of the child.[30] The conclusion of the courts below that petitioner abandoned his family needs more evidentiary support other than his inability to provide them the material comfort that his admittedly affluent in-laws could provide. There should be proof that he had so emotionally abandoned them that his children would not miss his guidance and counsel if they were given to adopting parents. The letters he received from his children prove that petitioner maintained the more important emotional tie between him and his children. The children needed him not only because he could cater to their whims but also because he was a person they could share with their daily activities, problems and triumphs.

The Court is thus dismayed that the courts below did not look beyond petitioner's "meager" financial support to ferret out other indications on whether petitioner had in fact abandoned his family. The omission of said courts has led us to examine why the children were subjected to the process of adoption, notwithstanding the proven ties that bound them to their father. To our consternation, the record of the case bears out the fact that the welfare of the children was not exactly the "paramount consideration" that impelled Anna Marie to consent to their adoption.

In her affidavit of consent, Anna Marie expressly said that leaving the children in the country, as she was wont to travel abroad often, was a problem that would naturally hamper her job-seeking abroad. In other words, the adoption appears to be a matter of convenience for her because Anna Marie herself is financially capable of supporting her children.[31] In his testimony, private respondent Ronald swore that Anna Marie had been out of the country for two years and came home twice or three times,[32] thereby manifesting the fact that it was she who actually left her children to the care of her relatives. It was bad enough that their father left their children when he went abroad, but when their mother followed suit for her own reasons, the situation worsened. The Clavano family must have realized this. Hence, when the family first discussed the adoption of the children, they decided that the prospective adopter should be Anna Marie's brother Jose. However, because he had children of his own, the family decided to devolve the task upon private respondents.[33]

This couple, however, could not always be in Cebu to care for the children. A businessman, private respondent Ronald Clavano commutes between Cebu and Manila while his wife, private respondent Maria Clara, is an international flight stewardess.[34] Moreover, private respondent Ronald claimed that he could "take care of the children while their parents are away,"[35] thereby indicating the evanescence of his intention. He wanted to have the children's surname changed to Clavano for the reason that he wanted to take them to the United States as it would be difficult for them to get a visa if their surname were different from his.[36] To be sure, he also testified that he wanted to spare the children the stigma of being products of a broken home.

Nevertheless, a close analysis of the testimonies of private respondent Ronald, his sister Anna Marie and their brother Jose points to the inescapable conclusion that they just wanted to keep the children away from their father. One of the overriding considerations for the adoption was allegedly the state of Anna Marie's health - she was a victim of an almost fatal accident and suffers from a heart ailment. However, she herself admitted that her health condition was not that serious as she could still take care of the children.[37] An eloquent evidence of her ability to physically care for them was her employment at the Philippine Consulate in Los Angeles[38] - she could not have been employed if her health were endangered. It is thus clear that the Clavanos' attempt at depriving petitioner of parental authority apparently stemmed from their notion that he was an inveterate womanizer. Anna Marie in fact expressed fear that her children would "never be at ease with the wife of their father." [39]

Petitioner, who described himself as single in status, denied being a womanizer and father to the sons of Wilma Soco.[40] As to whether he was telling the truth is beside the point. Philippine society, being comparatively conservative and traditional, aside from being Catholic in orientation, it does not countenance womanizing on the part of a family man, considering the baneful effects such irresponsible act visits on his family. Neither may the Court place a premium on the inability of a man to distinguish between siring children and parenting them. Nonetheless, the actuality that petitioner carried on an affair with a paramour cannot be taken as sufficient basis for the conclusion that petitioner was necessarily an unfit father.[41] Conventional wisdom and common human experience show that a "bad" husband does not necessarily make a "bad" father. That a husband is not exactly an upright man is not, strictly speaking, a sufficient ground to deprive him as a father of his inherent right to parental authority over the children.[42] Petitioner has demonstrated his love and concern for his children when he took the trouble of sending a telegram[43] to the lower court expressing his intention to oppose the adoption immediately after learning about it. He traveled back to this country to attend to the case and to testify about his love for his children and his desire to unite his family once more in the United States.[44]

Private respondents themselves explained why petitioner failed to abide by the agreement with his wife on the support of the children. Petitioner was an illegal alien in the United States. As such, he could not have procured gainful employment. Private respondents failed to refute petitioner's testimony that he did not receive his share from the sale of the conjugal home,[45] pursuant to their manifestation/compromise agreement in the legal

separation case. Hence, it can be reasonably presumed that the proceeds of the sale redounded to the benefit of his family, particularly his children. The proceeds may not have lasted long but there is ample evidence to show that thereafter, petitioner tried to abide by his agreement with his wife and sent his family money, no matter how "meager."

The liberality with which this Court treats matters leading to adoption insofar as it carries out the beneficent purposes of the law to ensure the rights and privileges of the adopted child arising therefrom, ever mindful that the paramount consideration is the overall benefit and interest of the adopted child, should be understood in its proper context and perspective. The Court's position should not be misconstrued or misinterpreted as to extend to inferences beyond the contemplation of law and jurisprudence.[46] The discretion to approve adoption proceedings is not to be anchored solely on best interests of the child but likewise, with due regard to the natural rights of the parents over the child.[47]

In this regard, this Court notes private respondents' reliance on the manifestation/compromise agreement between petitioner and Anna Marie which became the basis of the decree of legal separation. According to private respondents' counsel,[48] the authority given to Anna Marie by that decree to enter into contracts as a result of the legal separation was "all embracing"[49] and, therefore, included giving her sole consent to the adoption. This conclusion is however, anchored on the wrong premise that the authority given to the innocent spouse to enter into contracts that obviously refer to their conjugal properties, shall include entering into agreements leading to the adoption of the children. Such conclusion is as devoid of a legal basis as private respondents' apparent reliance on the decree of legal separation for doing away with petitioner's consent to the adoption.

The transfer of custody over the children to Anna Marie by virtue of the decree of legal separation did not, of necessity, deprive petitioner of parental authority for the purpose of placing the children up for adoption. Article 213 of the Family Code states: ". . . in case of legal separation of parents, parental authority shall be exercised by the parent designated by the court." In awarding custody, the court shall take into account "all relevant considerations, especially the choice of the child over seven years of age, unless the parent chosen is unfit."

It should be noted, however, that the law only confers on the innocent spouse the "exercise" of parental authority. Having custody of the child, the innocent spouse shall implement the sum of parental rights with respect to his rearing and care. The innocent spouse shall have the right to the child's services and earnings, and the right to direct his activities and make decisions regarding his care and control, education, health and religion.[50]

In a number of cases, this Court has considered parental authority, the joint exercise of which is vested by the law upon the parents,[51] as

"x x x a mass of rights and obligations which the law grants to parents for the purpose of the children's physical preservation and development, as well as the cultivation of their intellect and the education of their hearts and senses. As regards parental authority, 'there is no power, but a task; no complex of rights, but a sum of duties; no sovereignty but a sacred trust for the welfare of the minor.'

Parental authority and responsibility are inalienable and may not be transferred or renounced except in cases authorized by law. The right attached to parental authority, being purely personal, the law allows a waiver of parental authority only in cases of adoption, guardianship and surrender to a children's home or an orphan institution. When a parent entrusts the custody of a minor to another, such as a friend or godfather, even in a document, what is given is merely temporary custody and it does not constitute a renunciation of parental authority. Even if a definite renunciation is manifest, the law still disallows the same.

The father and mother, being the natural guardians of unemancipated children, are duty-bound and entitled to keep them in their custody and company."[52] (Italics supplied)

As such, in instant case, petitioner may not be deemed as having been completely deprived of parental authority, notwithstanding the award of custody to Anna Marie in the legal separation case. To reiterate, that award was arrived at by the lower court on the basis of the agreement of the spouses.

While parental authority may be waived, as in law it may be subject to a compromise,[53] there was no factual finding in the legal separation case that petitioner was such an irresponsible person that he should be deprived of custody of his children or that there are grounds under the law that could deprive him of parental authority. In fact, in the legal separation case, the court thereafter ordered the transfer of custody over the children from Anna Marie back to petitioner. The order was not implemented because of Anna Marie's motion for reconsideration thereon. The Clavano family also vehemently objected to the transfer of custody to the petitioner, such that the latter was forced to file a contempt charge against them.[54]

The law is clear that either parent may lose parental authority over the child only for a valid reason. No such reason was established in the legal separation case. In the instant case for adoption, the issue is whether or not petitioner had abandoned his children as to warrant dispensation of his consent to their adoption. Deprivation of parental authority is one of the effects of a decree of adoption.[55] But there cannot be a valid decree of adoption in this case precisely because, as this Court has demonstrated earlier, the finding of the courts below on the issue of petitioner's abandonment of his family was based on a misappreciation that was tantamount to non-appreciation, of facts on record.

As regards the divorce obtained in the United States, this Court has ruled in *Tenchavez v. Escaño*[56] that a divorce obtained by Filipino citizens after the effectivity of the Civil Code is not recognized in this jurisdiction as it is contrary to State policy. While petitioner is now an American citizen, as regards Anna Marie who has apparently remained a Filipino citizen, the divorce has no legal effect.

Parental authority is a constitutionally protected State policy borne out of established customs and tradition of our people. Thus, in *Silva v. Court of Appeals*,[57] a case involving the visitorial rights of an illegitimate parent over his child, the Court expressed the opinion that:

"Parents have the natural right, as well as the moral and legal duty, to care for their children, see to their upbringing and safeguard their best interest and welfare. This authority and responsibility may not be unduly denied the parents; neither may it be renounced by them. Even when the parents are estranged and their affection for each other is lost, the attachment and feeling for their offsprings invariably remain unchanged. Neither the law nor the courts allow this affinity to suffer absent, of course, any real, grave and imminent threat to the well-being of the child."

Since the incorporation of the law concerning adoption in the Civil Code, there has been a pronounced trend to place emphasis in adoption proceedings, not so much on the need of childless couples for a child, as on the paramount interest of a child who needs the love and care of parents. After the passage of the Child and Youth Welfare Code and the Family Code, the discernible trend has impelled the enactment of Republic Act No. 8043 on Intercountry Adoption[58] and Republic Act No. 8552 establishing the rules on the domestic adoption of Filipino children.[59]

The case at bar applies the relevant provisions of these recent laws, such as the following policies in the "Domestic Adoption Act of 1998":

- (a) To ensure that every child remains under the care and custody of his/her parent(s) and be provided with love, care, understanding and security towards the full and harmonious development of his/her personality.[60]
- (b) In all matters relating to the care, custody and adoption of a child, his/her interest shall be the paramount consideration in accordance with the tenets set forth in the United Nations (UN) Convention on the Rights of

the Child.[61]

(c) To prevent the child from unnecessary separation from his/her biological parent(s).[62]

Inasmuch as the Philippines is a signatory to the United Nations Convention on the Rights of the Child, the government and its officials are duty bound to comply with its mandates. Of particular relevance to instant case are the following provisions:

"States Parties shall respect the responsibilities, rights and duties of parents . . . to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention." [63]

"States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests." [64]

"A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents . . ." [65]

"States Parties shall respect the rights and duties of the parents . . . to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child." [66]

Underlying the policies and precepts in international conventions and the domestic statutes with respect to children is the overriding principle that all actuations should be in the best interests of the child. This is not, however, to be implemented in derogation of the primary right of the parent or parents to exercise parental authority over him. The rights of parents vis-à-vis that of their children are not antithetical to each other, as in fact, they must be respected and harmonized to the fullest extent possible.

Keith, Charmaine and Joseph Anthony have all grown up. Keith and Charmaine are now of legal age while Joseph Anthony is approaching eighteen, the age of majority. For sure, they shall be endowed with the discretion to lead lives independent of their parents. This is not to state that this case has been rendered moot and academic, for their welfare and best interests regarding their adoption, must be determined as of the time that the petition for adoption was filed.[67] Said petition must be denied as it was filed without the required consent of their father who, by law and under the facts of the case at bar, has not abandoned them.

WHEREFORE, the instant petition for review on certiorari is hereby GRANTED. The questioned Decision and Resolution of the Court of Appeals, as well as the decision of the Regional Trial Court of Cebu, are SET ASIDE thereby denying the petition for adoption of Keith, Charmaine and Joseph Anthony, all surnamed Cang, by the spouse respondents Ronald and Maria Clara Clavano. This Decision is immediately executory.

SO ORDERED.

Narvasa, C.J., (Chairman), Kapunan, and Purisima, JJ., concur.

[1] Penned by Associate Justice Serafin E. Camilon and concurred in by Associate Justices Celso L. Magsino and Artemon D. Luna.

[2] Presided by Judge Renato C. Dacudao.

[3] Docketed as Civil Case No. JD-707.

[4] Presided by Judge Maura C. Navarro.

- [5] Original Records, pp. 39-40.
- [6] Exh. H-2.
- [7] Original Records, pp.5-7.
- [8] RTC Decision, p. 3.
- [9] RTC Decision, pp. 7-8.
- [10] CA Decision, pp.16-17. Penned by Justice Serafin E. Camilon, Celso L. Magsino and Artemon D. Luna, JJ., concurring.
- [11] Record of CA-G.R. CV No. 27108, pp.46-53.
- [12] Republic v. Court of Appeals and Bobiles, G.R. No. 92326, January 24, 1992, 205 SCRA 356, 362.
- [13] AQUINO, CIVIL CODE, Vol. I, 1990 ed., p. 299 citing Santos v. Aranzanso, 123 Phil. 160, 167 (1966).
- [14] Republic v. Court of Appeals and Bobiles, supra, at p. 365.
- [15] Exh. A.
- [16] Duncan v. CFI of Rizal, L-30576, February 10, 1976, 69 SCRA 298; Santos v. Aranzanso, supra.
- [17] Del Mundo v. Court of Appeals, 322 Phil. 463, 471 (1996).
- [18] Imperial v. Court of Appeals, G.R. No. 102037, July 17, 1996, 259 SCRA 65, 71.
- [19] Philippine National Bank v. Court of Appeals, L-43972, July 24, 1990, 187 SCRA 735, 739 citing Ongsiako v. Intermediate Appellate Court, G.R. No. 69901, July 31, 1987, 152 SCRA 627.

[20] 258 SCRA 651 [1996].

- [21] P.M. Pastera Brokerage v. Court of Appeals, G.R. No. 113657, January 20, 1997, 266 SCRA 365, 371.
- [22] De la Cruz v. De la Cruz, 130 Phil. 324 (1968).
- [23] Duncan v. CFI of Rizal, supra at p.304; Santos v. Aranzanso, supra at p. 168.
- [24] De la Cruz v. De la Cruz, supra.
- [25] Exhs. 15 to 17.

[26] 250 SCRA 82 [1995].

- [27] 86 Phil. 554, 559-560 (1950).
- [28] 312 Phil. 431 (1995).
- [29] Ibid., at p. 439.
- [30] See; Perez v. Court of Appeals, 325 Phil. 1014, 1020 (1996).
- [31] TSN, November 17, 1987, p. 38.
- [32] Ibid., p. 22.
- [33] RTC Decision, pp.1-2.

- [34] TSN, February 3, 1988, p.13.
- [35] TSN. November 17, 1987, p. 24.
- [36] Ibid., pp. 28-29.
- [37] TSN, January 12, 1988, p. 10.
- [38] Ibid.
- [39] Ibid., p. 6.
- [40] TSN, December 8, 1987, p.12.
- [41] Silva v. Court of Appeals, G.R. No. 114742, July 17, 1997.
- [42] Chua v. Cabangbang, 137 Phil. 204 (1969).
- [43] Exh. 18.
- [44] TSN, December 8, 1987, pp.47-48; February 11, 1988, p. 6.
- [45] TSN, December 8, 1987, p. 20.
- [46] Republic v. Hernandez, 323 Phil. 606 (1996).
- [47] Republic v. Court of Appeals and Bobiles, supra.
- [48] Atty. Ricardo Padilla.
- [49] TSN, November 17, 1987, p. 37.
- [50] Dissenting Opinion of Justice Felix V. Makasiar in Luna v. Intermediate Appellate Court (G.R. No. 68374, June 18, 1985, 137 SCRA 7) citing 59 Am. Jur. 2d 107.
- [51] Art. 211, Family Code.
- [52] Sagala-Eslao v. Court of Appeals, G.R. No. 116773, January 16, 1997, 266 SCRA 317, 322-323 citing Santos, Sr. v. Court of Appeals, G.R. No. 113054, March 16, 1995, 242 SCRA 407.
- [53] TOLENTINO, CIVIL CODE OF THE PHILIPPINES, Vol. V, 1992 ed., p. 491 citing 4 Salvat 383.
- [54] TSN, February 11, 1988, pp. 9-12.
- [55] Cervantes v. Fajardo, G.R. No. 79955, January 27, 1989, 169 SCRA 575, 579.
- [56] 122 Phil. 752 (1965).
- [57] Supra.
- [58] The law was approved on June 7, 1995.
- [59] The law was approved on February 25, 1998.
- [60] Art. 1, Sec. 2(a), R.A. No. 8552.
- [61] Art. 1, Sec. 2(b), Ibid; adopted by the General Assembly of the United Nations on November 20, 1989 and ratified by the Philippines in July 1990 by virtue of Senate Resolution No. 109.
- [62] Art. 1, Sec. 2(c), ii, Ibid.

[63] Art. 5, Convention on the Rights of the Child.

[64] Art. 9, parag. 3, Ibid.

[65] Art. 10, parag. 2, Ibid.

[66] Art. 14, parag. 2. Ibid.

[67] See: *Espiritu v. Court of Appeals*, supra at p.441.

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